IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 482 OF 1988.

The Commissioner of Income ... Applicant.

V/s.

The Hindustan Sugar Mills Ltd. ... Respondent.

Shri A.N. Kotangale with D.A.Dube i/b H.D. Rathod for the applicant.

Ms.V.B. Patel for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 25.7.2005

P.C. :

. By this reference under section 256 of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this Court:

. Whether, on the facts and in the circumstances of the case, and in law the I.T.A.T. was justified in holding that the amount of Rs.1,12,170/- being the amount transferred to reserve for construction of molasses storage tank was not assessable as income of the assessee.?

. Learned counsel for the parties agreed that the above question is covered by the Division Bench

of this Court in the case of Somaiya Orgeno-Chemicals Ltd. vs. C.I.T. (1995) 216 ITR 291.Learned Counsel appearing for the assessee also pointed out the aforesaid issue is also covered by the subsequent judgment of the Apex Court in the case of **C.I.T. vs. New Horizon Sugar Mills P.Ltd.(2004) 269 ITR 397** wherein decision of the High Court holding that the amount set apart by the assessee, which was carrying on business in manufature and sale of sugar, towards the molasses reserve fund as required by the Molasses Control Order, for the purpose of construction of molasses storage tank, should be excluded from its total income. In this view of the matter, the question referred is answered in the affirmative i.e. in favour of the assessee and against the revenue.

. Reference stands disposed of with no order as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**